well hesitate to be so strict, since much doubt may be cast on the so-called public policy on which it is founded. The interest of the public is no longer a unit. When corporations were few it was fair to give predominance to the interest of individuals competing with them. Since corporations now are many, the interest of those who contract with them seems at least as important to the public as the interest of individual competitors. The remedy in quasi-contract is not always sufficient to accomplish justice, since the plaintiff may be damaged by loss of the contract more than the defendant has actually gained. On the other hand, it seems impossible to make an exception in these cases on grounds of estoppel, for if public policy forbids the defendant to bind itself by words of contract, the same should be true of words of representation. The only logical ground for holding a corporation in these cases is by going to the opposite extreme and declaring that only the State can assail an *ultra vires* contract. 9 HARVARD LAW REVIEW, 255. This, however, prevents a corporation from rejecting a contract still wholly executory. Perhaps the only solution of this difficulty is to make an arbitrary exception on grounds of justice in cases where the plaintiff has fully performed his part.

PRIVILEGED COMMUNICATION. — In the case of *Caldwell* v. *Story*, 52 S. W. Rep. 850 (Ky.) the court passed upon the question of privilege in an action for libel. A note had been sent for collection by the plaintiff's agents through an intermediate bank to the Bank of Albany. The defendant, who was the payor, having refused to pay, the cashier endorsed upon the paper, "Never signed a note; fraud, forgery," and returned it through the intermediate bank. The endorsement was intended to give the reasons assigned by the payor for non-payment. It was shown to be a local custom to endorse notes with reasons for non-payment. The court held that the communication was privileged.

The true theory of privilege seems to be in the nature of an exception to the general right of every individual to an untarnished reputation. Under special circumstances, it is proper to relax the rigidity of the rule; for example, when one may protect himself or aid another only by remarks derogatory to a third person. But in such cases the general rule of liability is merely suspended with reference to the parties in interest. The established rule which is stated by the court "that any communication made in good faith upon any subject in which the person has an interest, or with reference to which he has a duty, public or private, either legal, moral, or social, if made to a person having a corresponding interest or duty, is privileged," is wholly consistent with the general theory. *Harrison* v. *Bush*, 5 E. & B. 344. But the court does not mention a consideration equally important that when the defendant makes a statement to protect his interest it must be clear that he was compelled to make it defamatory, and that he kept its publication within due bounds. If he go further than is necessary he should not be allowed the privilege. Odgers, Libel and Slander, 3d ed., 251, 260.

Clearly, therefore, extensions of the rule should be guarded. The principal case, however, goes far towards widening the group of persons with reference to whom publication may be privileged. Here the note with its endorsed statement went through the hands of persons employed by agent banks, and it can hardly be said that the statement was not communicated to them. If the number of intermediate agents be multi-

plied, thus involving an increase of those who get knowledge of the writing, the principle which the court applies must remain the same. This possibility suggests the cases which have refused to extend this privilege when the manner of sending involved too wide publication, as sending by postal card, *Robinson* v. *Jones*, 4 L. R. Ir. 391; or by telegram, *Williamson* v. *Freer*, L. R. 9 C. P. 393. The decisions in both cases were influenced by the necessity for care in extending the sphere of publication. In the case of *Boxsins* v. *Goblet Frères*, [1894] 1 Q. B. 842, a communication was held to be privileged where the publication was to copying clerks in the office of the defendant, a solicitor, in view that copying letters was necessary and usual in the business. But that may be distinguished from the present case, for here the clerks were not in the defendant's employ either at his place of business or elsewhere. Moreover, it seems difficult to justify what the defendant here did as necessary and usual in the business. It is true that the local custom was shown, but even that cannot alter the fact that many whose interest in the matter was extremely small got knowledge of the objectionable writing. There is at the same time no hardship on the defendant in refusing this justification, for he may still avail himself of custom as far as the real necessity of the case demands. Hence one may well disagree with the opinion in holding this a privileged communication.

Reservations and Exceptions in a Deed. — The law in this country on the reservation of easements in deeds of land is much confused and still remains in doubt. As the conveyances here are almost always by deeds poll and not by indenture, the English doctrine of a grant back of the easement strictly would not apply. Our courts have usually surmounted this difficulty by calling the reservation an "exception," appearing to consider the grantor's title as a bundle of rights, and that one of these — the easement in question — was retained by the grantor. An easement, however, has always been regarded by the common law as something newly created by the parties and entirely different from any of an owner's rights over his property. Accordingly a more consistent doctrine would be secured if, instead of trying to bring the reservation of an easement under the head of an exception from the grant, the courts recognized that the prevailing custom can only be supported on the ground of long usage.

The authorities on this subject are elaborately discussed in *Smith et al.* v. *Furbish*, 44 Atl. Rep. 398 (N. H.). In 1865, A, the plaintiff's ancestor, conveyed to B a tract of land along the bank of a river, reserving the right of building a dam across the river at any point and the right of flowage caused by the dam. The defendant contended that as there were no words of limitation in the reservation A only reserved a life estate in the easement. The court gave judgment for the plaintiff, holding that these reservations must be construed as exceptions, and hence words of limitation were unnecessary. If the easement is to be construed as an exception there would seem to be no necessity for words of limitation, — the grantor retaining part of his old estate, it is in him of the old right unless the contrary appear in the deed. The courts, while apparently agreeing with the principal case on this point, are not unanimous as to what shall be called an exception. Though the view of the principal case that all reservations may be construed as exceptions in order to give